

PROPOSALS FOR DISCUSSION AND ADOPTION

**Criminal Justice and Corrections
Advisory Council**

September 9, 1988

TENTATIVE AGENDA

Criminal Justice and Corrections Advisory Council
Friday, September 9, 1988
Room 312 F, State Capitol
9:00 a.m.
Helena, Montana

9:00 a.m. - 9:15 a.m. Call to order/roll call
9:15 a.m. - 10:30 a.m. Meeting with candidates
10:30 a.m. - 10:45 a.m. Break
10:45 a.m. - 12:15 p.m. Presentation of proposals by study committee members
12:15 p.m. - 1:15 p.m. Lunch (catered)
1:15 p.m. - 2:45 p.m. Adoption of proposals
2:45 p.m. - 3:00 p.m. Break
3:00 p.m. - 4:00 p.m. Strategies for legislative adoption of proposals
4:00 p.m. - 4:30 p.m. Discussion on future of the Council
4:30 p.m. - 5:00 p.m. Other business
5:00 p.m. Adjournment

TABLE OF CONTENTS

Projected Bed Savings For Selected Proposals	i
Costs For Implementing Proposals	ii
Proposal #1: Conditional Discharge From Supervision	1
Proposal #2: State-wide Intensive Supervision Program	9
Proposal #3: Diverting Eligible Offenders To Pre-release Centers	13
Proposal #4: Supervised Release Program: Revised Eligibility Criteria	17
Proposal #5: Expanded Sex Offender Treatment Program	21
Proposal #6: Pre-parole Programming	25
Proposal #7: Discretionary Early Discharges	29
Proposal #8: Jail Placement For Parole And Pre-release Center Violators	37
Proposal #9: Increase In Probation And Parole Officers	41
Proposal #10: Hiring Pre-sentence Investigators To Prepare Pre-sentence Investigations	45
Proposal #11: Parole Release: Removal Of Liberty Interest	49
Proposal #12: Half-time Board Of Pardons Chairman	55
Proposal #13: Staggered Terms For Board Of Pardons Members	61
Proposal #14: Construction Of Prison Housing Unit	67

PROJECTED BED SAVINGS FOR SELECTED PROPOSALS
(Fiscal Years 1990-1995)

	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>
75-bed intensive supervision program	60	86-89	86-94	85-98	81-97	75-95
120-day discretionary early discharge	53	54	55	56	57	58
DOI projected MSP population	1,059	1,095	1,118	1,139	1,157	1,174
Beds needed*	31	67	90	111	129	147

*Based on Department of Institutions projected population and maximum Montana State Prison population of 1,028

**COSTS FOR IMPLEMENTING PROPOSALS
FY 1990-1991 Biennium**

1. Conditional discharge from supervision	0
2. 75-bed intensive supervision program	\$486,260
3. Diverting offenders to pre-release centers	0
4. Revised eligibility criteria for supervised release program	0
5. Expanded sex offender treatment program	\$195,258
6. Pre-parole programming	73,712
7. Discretionary early discharges	0
8. Jail placement for parole and pre-release center violators	\$132,240
9. Additional probation and parole officers and support staff	\$755,025
10. Hiring pre-sentence investigators	\$512,797
11. Removal of liberty interest in parole release	0
12. Half-time Board of Pardons chair	\$48,896
13. Staggered terms for Board of Pardons members	0
14. Construction of 96-bed unit	\$1,124,111 - \$2,624,111

PROPOSAL #1
CONDITIONAL DISCHARGE FROM SUPERVISION

STATEMENT OF PROBLEM

In Montana, there is no explicit statutory authority for a judge to release a probationer from supervision before expiration of his/her deferred or suspended sentence. Likewise, the Board of Pardons has no explicit statutory authority to release a parolee from supervision before expiration of his/her sentence.¹

Among offenders serving deferred or suspended sentences under probation supervision in May 1988, sentences ranged from 0.5 years to 45 years; the average sentence was 5.1 years. Among inmates released on parole in 1987, the average length of stay on parole supervision was 5.5 years. In addition, over half of these parolees (53 percent) had suspended sentences averaging 5.2 years to be completed on probation supervision following final discharge from parole.

An extended period of probation or parole supervision may be unwarranted for certain offenders. It may unintentionally impede rehabilitative efforts by placing unnecessary restrictions on the probationer or parolee. In addition, an extended supervision period may burden limited probation and parole field services. For those offenders who have exhibited exemplary conduct during the initial period of probation or parole

¹ Although there is no explicit statutory authority permitting the Board to conditionally discharge a parolee from supervision, the Board's administrative rules permit the Board, upon recommendation of a probation and parole officer, to discharge a parolee. As of June 1988, 38 parolees (approximately eight percent of the parole population) were on conditional discharge.

supervision, a conditional discharge would likely pose little threat to community safety.

DESCRIPTION OF PROPOSAL

District judges should statutorily be authorized to conditionally discharge a probationer from supervision before expiration of his/her sentence. Likewise, the Board of Pardons should statutorily be authorized to conditionally discharge a parolee from supervision before expiration of his/her sentence. A conditional discharge should be granted when a judge or the Board, upon recommendation of a probation and parole officer, determines that the discharge is in the best interest of the offender and society. If an offender, while on conditional discharge, violates conditions of his/her probation, a judge may revoke the offender's deferred or suspended sentence. Similarly, the Board may revoke the parole of an offender on conditional discharge.

The Department of Institutions should adopt rules establishing explicit criteria for when a probation and parole officer should recommend a conditional discharge. When developing this criteria, the Department should consider a two-year period with no parole or probation violations as a minimum standard for recommending discharge.

IMPLEMENTATION COSTS

None.

PRISON POPULATION IMPACT

If most offenders were conditionally discharged after satisfactorily completing a given period of supervision (e.g., two years), the number of clients under

supervision will drop. A reduction in caseload may permit probation and parole officers to meet current supervision standards for their remaining clients. This may result in a reduction in the number of parole and probation violations. Fewer revocations will reduce prison admissions.

Among offenders under supervision as of August 1, 1988, approximately 160 parolees and 935 probationers will have completed two or more years of supervision as of January 1, 1989. If, for example, 25 percent of these offenders were granted conditional discharges, the current workload equivalent of 3.10 full-time probation and parole officers would be eliminated.² This reduction in workload may allow officers more time to supervise their remaining clients.

REQUIRED LEGISLATION/ADMINISTRATIVE RULES

See attached bill draft. To assist probation and parole officers in determining when conditional discharge should be recommended to a court or the Board of Pardons, the Department of Institutions should adopt rules providing explicit guidelines and criteria.

² This estimate was derived from a Department of Institutions workload analysis. For the purposes of the analysis, it was assumed that 50 percent of the probationers and parolees were on maximum supervision, 30 percent were on medium supervision, and 20 percent were on minimum supervision. These percentages were based on fiscal year 1988 caseloads.

IMPLEMENTATION ISSUES

If inappropriate parolees or probationers are conditionally discharged from supervision, public safety may be jeopardized.

Present to logic on basis that
Judges already do it and
should be statutorily stated.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 46-23-1011, MCA, is amended to
15 read:

16 "46-23-1011. Supervision on probation. (1) The
17 department shall supervise persons during their probation
18 period in accord with the conditions set by a court.

19 (2) A copy of the conditions of probation shall be
20 signed by the probationer and given to him and his probation
21 and parole officer who shall report on his progress under
22 rules of the court.

23 (3) The probation and parole officer shall regularly
24 advise and consult with the probationer to encourage him to
25 improve his condition and conduct and inform him of

1 restoration of his rights on successful completion of his
2 sentence.

3 (4) The probation and parole officer may recommend and
4 a court may modify any condition of probation or suspension
5 of sentence at any time. Notice shall be given to the
6 probation and parole officer before any condition is
7 modified, and he shall be given an opportunity to present
8 his ideas or recommendations on any modification. A copy of
9 a modification of conditions shall be delivered to the
10 probation and parole officer and the probationer.

11 (5) The probation and parole officer shall keep
12 records as the department or the court may require.

13 (6) (a) Upon recommendation of the probation and
14 parole officer, a court may discharge a probationer from
15 supervision before expiration of his sentence if the court
16 determines that discharge from supervision is in the best
17 interest of the probationer and society.

18 (b) Nothing in subsection (6)(a) prohibits a court
19 from revoking the order suspending execution or deferring
20 imposition of sentence, as provided in 46-18-203, for a
21 probationer who has been discharged from supervision."

22 Section 2. Section 46-23-1021, MCA, is amended to
23 read:

24 "46-23-1021. Supervision on parole. (1) The department
25 shall retain custody of all persons placed on parole and

1 shall supervise the persons during their parole period in
2 accord with the conditions set by the board.

3 (2) The department shall assign personnel to assist
4 persons eligible for parole in preparing a parole plan.
5 Department personnel shall make a report of their efforts
6 and findings to the board prior to its consideration of the
7 case of the eligible person.

8 (3) A copy of the conditions of his parole shall be
9 signed by the parolee and given to him and to his probation
10 and parole officer, who shall report on his progress under
11 the rules of the board.

12 (4) The probation and parole officer shall regularly
13 advise and consult with the parolee, assist him in adjusting
14 to community life, and inform him of the restoration of his
15 rights on successful completion of sentence.

16 (5) The probation and parole officer shall keep such
17 records as the board or department may require. All records
18 shall be entered in the master file of the individual.

19 (6) (a) Upon recommendation of the probation and
20 parole officer, the board may discharge a parolee from
21 supervision before expiration of his sentence if the board
22 determines that discharge from supervision is in the best
23 interest of the parolee and society.

24 (b) Nothing in subsection (6)(a) prohibits the board
25 from revoking the parole, as provided in 46-23-1025, of a

1 parolee who has been discharged from supervision."

2 NEW SECTION. Section 3. Extension of authority. Any
3 existing authority of the department of institutions and the
4 board of pardons to make rules on the subject of the
5 provisions of this act is extended to the provisions of this
6 act.

7 NEW SECTION. Section 4. Applicability. This act
8 applies to persons under probation or parole supervision on
9 or after the effective date of this act.

-End-

PROPOSAL #2
STATE-WIDE INTENSIVE SUPERVISION PROGRAM

STATEMENT OF PROBLEM

According to the Department of Institutions, the inmate population at Montana State Prison (MSP) will exceed its maximum capacity of 1,028 inmates by the end of fiscal year 1990. Therefore, an additional 96-bed housing unit would be required by that time. An intensive supervision program (ISP) may delay the need for building the additional housing unit by: (1) diverting offenders from prison and (2) releasing inmates from prison early.

DESCRIPTION OF PROPOSAL

Intensive supervision programs³ should be established in Billings, Great Falls, and Missoula. Each program would have the capacity to supervise 25 offenders. The ISPs should be modeled after the Billings intensive supervision pilot project, which consists of phases, each with different supervision levels. Supervision should consist of two officers and electronic monitoring during the most intensive phase. Offenders diverted from prison to ISP would have been placed in prison if ISP did not exist. Similarly, parolees released to ISP would not have been paroled from prison if ISP did not exist.

³The intent of intensive supervision is to provide closely monitored supervision of offenders to protect the community while maintaining the client in the least restrictive environment possible.

IMPLEMENTATION COSTS

Start-up costs (incl. office equipment, automobiles, two monitoring computers, and 19 wristlets)	\$100,450
Biennial operational costs (incl. six Grade 13 officers ⁴ , computer maintenance contracts, urinalysis reagents)	\$385,810
Total cost for first biennium	\$486,260

PRISON POPULATION IMPACT

Unless expanded in the future, a successful, fully implemented 75-client ISP should keep the inmate population below the 1,028 inmate maximum capacity until the end of fiscal year 1992 or 1993.

Fiscal Year-End Bed Savings*

<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>
60	86-89	86-94	85-98	81-97	75-95

- *Notes:
1. Based on Department of Institutions projections.
 2. Low ranges are based on offender prison length of stays (LOSs) of 8-9 months; high ranges are based on offender prison LOSs of 12-13 months.
 3. Bed savings calculations assume a program effective date of July 1, 1989.

⁴The actual classification of these positions would be determined by the Department of Administration based on job content.

REQUIRED LEGISLATION/ADMINISTRATIVE RULES

Statutory authority is required for program authorization and for offender placement procedures. Items that should be addressed in legislation include:

- (1) statement of intent and program description;
- (2) authorization to implement an ISP;
- (3) authorization for the Department to adopt rules necessary to carry out the provisions of the legislation;
- (4) procedures for front-end diversion through referrals from district courts or intensive supervision officers, including authority for judges to amend sentences to prison to sentences of probation, with ISP as a condition of probation;
- (5) appropriation of \$486,260 for the 1990-1991 biennium and authority for the Department to hire six FTE; and
- (6) effective date.

The Department would develop administrative rules to implement the legislation. Items that should be addressed in rules include:

- (1) selection criteria for both front-end and back-end placements;
- (2) designation of a screening committee and screening procedures;

- (3) revocation procedures and penalties;
- (4) procedures for paroling inmates to ISP through referrals from the Board of Pardons to the Department;

IMPLEMENTATION ISSUES

Problems may arise in both implementation and operation of an ISP. Possible problems are: slow start-up time, community resistance, placement of offenders who would otherwise have been placed on regular probation or parole (widening the net), or an inadequate number of eligible offenders. An ISP also may have difficulty placing offenders who do not have residences, telephones, or local support systems.

PROPOSAL #3
DIVERTING ELIGIBLE OFFENDERS TO
PRE-RELEASE CENTERS

STATEMENT OF PROBLEM

According to the Department of Institutions, the inmate population at Montana State Prison (MSP) will exceed its maximum capacity of 1,028 inmates by the end of fiscal year 1990. Therefore, an additional 96-bed housing unit would be required by that time. Diverting prison-bound offenders to pre-release centers, in combination with other programs, may delay the need for building the additional housing unit.

In addition, the proposed intensive supervision program (ISP) likely would be unable to divert all eligible offenders because some may not meet other program requirements. Some of those types of offenders could be diverted to pre-release centers, rather than sentenced to prison.

DESCRIPTION OF PROPOSAL

Procedures should be developed allowing convicted felony offenders to be diverted from MSP or the Women's Correctional Center (WCC) to available beds in existing pre-release centers. Authority for placing offenders in pre-release centers should be incorporated within legislation developed for the proposed ISP. Placement would occur through referrals to the Department from district courts or intensive supervision officers. District judges would amend the prison sentences of eligible offenders to sentences of probation, with pre-release placement a condition of probation. Offenders diverted to pre-release centers would have otherwise been placed in MSP or WCC. Upon successful completion

of the pre-release program, offenders would be transferred to an appropriate supervision level in ISP.

IMPLEMENTATION COSTS

No implementation costs are associated with this proposal. Payment to the pre-release centers for placements would be covered by current contracts.

PRISON POPULATION IMPACT

If: (1) five persons were successfully diverted each year and (2) those offenders did not occupy space required for regular pre-release placement, six or seven prison beds should be saved annually.

Fiscal Year-End Bed Savings*					
<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>
4	6	7	7	7	6

- *Notes:
1. Based on Department of Institutions projections.
 2. Bed savings calculations assume a successful diversion of five offenders per year.

REQUIRED LEGISLATION/ADMINISTRATIVE RULES

Statutory authority is required for offender placement procedures. Legislation would be incorporated within proposed intensive supervision legislation. Items that should be addressed include:

- (1) diversion procedures through referrals from district courts or intensive supervision officers, including authority for judges to amend sentences to prison to sentences of

probation, with pre-release center placement as a condition of probation;

- (2) authorization for the Department to adopt rules necessary to carry out the provisions of the legislation; and
- (3) effective date.

The Department would develop administrative rules to implement the legislation. Items that should be addressed in rules include:

- (1) selection criteria for placements;
- (2) designation of a screening committee and screening procedures; and
- (3) revocation procedures and penalties.

IMPLEMENTATION ISSUES

Diverting offenders to pre-release centers could delay the transfer of inmates from MSP or WCC to pre-release centers if space were lacking in the centers. Additional problems may be community resistance, placement of offenders who would otherwise have been placed on regular probation (widening the net), no space available in pre-release centers, or an inadequate number of eligible offenders.

*- Joe Loo
Gen
S attached*

PROPOSAL #4
SUPERVISED RELEASE PROGRAM: REVISED
ELIGIBILITY CRITERIA

STATEMENT OF PROBLEM

The supervised release program allows an inmate, upon approval of the Board of Pardons, to participate in a recognized educational, treatment, or training program or to be employed in conjunction with any of these programs. An inmate may apply for supervised release when: (1) he/she has served at least one-half the time required to be considered for parole and (2) not more than 15 months remain before the inmate is eligible to be released on parole. While on release, the inmate is supervised by a sponsor and a probation and parole officer. Although the primary purpose of the program is rehabilitation, a vigorous supervised release program could help alleviate prison overcrowding by releasing under supervision appropriate, low-risk offenders.

Participation in Montana's supervised release program has been minimal. From 1980 through 1987, the Board interviewed 89 inmates for supervised release or furloughs⁵, an average of 11 inmates each year. The Board approved 35 applications or 39 percent of those reviewed; fifty-four applications or 61 percent were denied. Six inmates were on supervised release or furlough on December 31, 1985, five on December 31, 1986, and three on December 31, 1987. Currently, there are two inmates on supervised release or furlough.

If the program's eligibility requirements were revised to allow an inmate to apply earlier for supervised

⁵ The furlough program was the precursor to the supervised release program.

release, the pool of applicants may increase. An increase in applicants may result in more supervised releases.

DESCRIPTION OF PROPOSAL

The eligibility requirements for the supervised release program should be revised to permit an inmate to apply for the program when he/she is within 24 months (rather than 15 months) of parole-eligibility.

IMPLEMENTATION COSTS

None.

PRISON POPULATION IMPACT

The revised eligibility requirements may result in an increase in supervised release applicants. An increase in applicants, in turn, may result in more supervised releases, if the Board determines that the additional applicants are suitable for release.

REQUIRED LEGISLATION/ADMINISTRATIVE RULES

See attached bill draft.

IMPLEMENTATION ISSUES

Implementation of this proposal will likely increase the workload of prison staff who screen inmates before referring them to the Board. In addition, the Board's workload will probably increase because of additional applicants.

1

BILL NO.

2 INTRODUCED BY _____

3 BY REQUEST OF THE CRIMINAL JUSTICE
4 AND CORRECTIONS ADVISORY COUNCIL

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE
7 ELIGIBILITY REQUIREMENTS FOR PRISONER PARTICIPATION IN THE
8 SUPERVISED RELEASE PROGRAM; AMENDING SECTION 46-23-411, MCA;
9 AND PROVIDING AN APPLICABILITY DATE."

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 46-23-411, MCA, is amended to read:
13 "46-23-411. Application to participate -- eligibility.14 (1) Any prisoner, except a prisoner serving a sentence
15 imposed under 46-18-202(2), may make application to
16 participate in the supervised release program if he has
17 served at least one-half of the time required to be
18 considered for parole and not more than ±5 24 months remain
19 before he is eligible for parole.20 (2) Prisoners serving sentences with the restriction
21 imposed under 46-18-202(2) are not eligible for
22 participation in the program.23 (3) In order to be accepted into the program, an
24 applicant must qualify under the rules established by the
25 department."

1 NEW SECTION. Section 2. Extension of authority. Any
2 existing authority of the department of institutions and the
3 board of pardons to make rules on the subject of the
4 provisions of this act is extended to the provisions of this
5 act.

6 NEW SECTION. Section 3. Applicability. This act
7 applies to persons incarcerated at the time of or after the
8 effective date of this act.

-End-

PROPOSAL #5
EXPANDED SEX OFFENDER TREATMENT PROGRAM

STATEMENT OF THE PROBLEM

Currently, approximately 22 percent of the inmate population at Montana State Prison (MSP) are sex offenders. Seventy-two percent of those offenders are not in treatment. Approximately 65 sex offenders in calendar year 1987 were denied parole for lack of treatment or for not completing treatment.

Three treatment staff work part-time on the sex offender program at MSP for the equivalent of 0.975 of a full-time employee. If staffing for the sex offender program were increased, more sex offenders could be treated more effectively and prepared for parole or discharge. Of the current population of 228 sex offenders, 117 will discharge by 1999. Treatment is not a cure, but can teach the offender how to control his problem in the community. In addition, if inmates receive treatment, their chances of being paroled are enhanced. An increase in paroles would help alleviate prison overcrowding.

DESCRIPTION OF THE PROPOSAL

1. The following staff should be hired:

- > Two psychologists
- > One social worker
- > One secretary

In addition, the duties of the current treatment staff should be reorganized so that one staff member is assigned to the sex offender program full-time.

2. A polygraph machine should be purchased. A polygraph machine is necessary as a treatment tool to enable staff to bring the offender to the point of confronting his problem. One of the new staff hired for the treatment program should be qualified to use the machine or should be trained in its use after being hired.
3. Present housing units at MSP should be reorganized to allow two additional Intensive Treatment Units (ITUs)⁶ to be added as the need arises and staff is prepared. The additional ITUs should be added incrementally after each current ITU is staffed with a psychologist and a pool of inmates is prepared to enter Phase II treatment. This should allow expansion of Phase II, decrease waiting and holding time, and increase the volume of the program.
4. Implementation of this proposal should permit the treatment of more sex offenders before they are released by:
 - > increasing applications to the program by at least one-third;
 - > increasing the capacity of the program from 28 percent of the sex offenders to 46 percent; and
 - > reducing the time for completion of the program by up to six months.

⁶An Intensive Treatment Unit (ITU) is a separate housing unit in which inmates receive a variety of treatment programs, including sex offender treatment.

IMPLEMENTATION COSTS

Salaries and Benefits:

Two psychologists (Grade 15, Step 2)	\$56,344
One social worker (Grade 12, Step 2)	22,272
One secretary (Grade 8, Step 2)	17,013
> Subtotal	\$95,629
> Biennial Cost	\$191,258

Equipment:

Polygraph Machine	\$4,000
> TOTAL BIENNIAL COST, FY 1990-1991	\$195,258

PRISON POPULATION IMPACT

Among sex offenders released on parole in calendar year 1987, length of stay from parole eligibility to release was approximately 12 months, compared to 8 months for all inmates paroled that year. Several factors associated with the sex offender treatment program may contribute to this increased length of stay for sex offenders. For example, no staff is available to actively recruit and enroll inmates in the program to ensure that they will have completed the program by their parole-eligibility date. In addition, because of the small staff size, delays in completing treatment occur. Moreover, the availability of only two ITUs and the small staff limits the program's capacity.

Hiring additional staff and creating additional ITUs may reduce or eliminate the additional four months length of stay for sex offenders. There will be an estimated 134 sex offenders who will become eligible for parole from 1988 to 1991. If 50 percent of the sex offenders who become parole-eligible in a given year are paroled and

their length of stay is reduced by four months, the bed savings for FY 1988-1991 should be:

Bed Savings with a Reduced Length of Stay for Sex Offenders			
<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
5.5	5.8	5.3	5.6

REQUIRED LEGISLATION

Legislative approval is required for additional Department of Institutions employees and for funding the new positions.

IMPLEMENTATION ISSUES

Reduced length of stay for sex offenders and the resulting bed savings would only occur if the Board of Pardons paroles sex offenders who complete treatment. Also, sex offender treatment is not the only treatment needed in a prison. The entire treatment program may need to be revamped with the sex offender program as a priority.

PROPOSAL #6
PRE-PAROLE PROGRAMMING

STATEMENT OF PROBLEM

In 1987, 290 inmates were released on parole. These inmates were incarcerated an average of eight months (0.67 years) from their parole eligibility date until release. On an average, inmates released that year were considered by the Board of Pardons 2.4 times before parole was granted.⁷ Forty-one percent waived their first parole hearing, while only twenty-four percent were granted parole on their first appearance.

According to Board of Pardons officials, many parolees are denied release at their initial hearings because they are ill-prepared to return to the community. Similarly, inmates often waive their right to a parole hearing upon recommendation of the Board staff who advise them that parole is unlikely unless certain educational, training, or treatment requirements are met. The length of stay between parole-eligibility and release and the number of parole hearing waivers could be reduced if inmates began preparing for release immediately upon admission to prison.

DESCRIPTION OF PROPOSAL

A pre-parole program should be implemented to better prepare an inmate for his/her parole hearing and possible release. Under this proposal, an inmate, during his/her three-week orientation period at Montana State Prison or the Women's Correctional Center, would

⁷ In calculating the number of Board considerations, the following dispositions were counted: waivers, annual reviews, passed to a later date, passed to discharge, and parole granted.

develop a pre-parole programming plan with assistance from a Board of Pardons administrative officer. This plan would define certain goals and objectives for the inmate in the areas of institutional training, education, work, treatment, and conduct. The plan would be approved by the Board chairman. The administrative officer, together with prison staff, would monitor the inmate's compliance with his/her plan. Also during the incarceration period, the inmate and Board staff would work with Montana probation and parole services or interstate compact administrators to develop an appropriate parole release plan well in advance of the inmate's parole hearing.

IMPLEMENTATION COSTS

To administer the pre-parole program, one full-time administrative officer (Grade 15, step 1) and one half-time secretary (Grade 7, step 1) will be needed.^a These individuals will be employed by the Board of Pardons.

Salary and benefits for FY 1990 - 1991 biennium:

Administrative officer	=	\$56,344
Secretary (half-time)	=	<u>17,368</u>
Total personal services	=	\$73,712

PRISON POPULATION IMPACT

Implementation of a pre-parole program may, over time, result in the following:

- (1) Reduction in length of stay: The pre-parole programming process should assist the Board in

^a The actual classification of these positions will be determined by the Department of Administration, based on job content.

identifying at an early date those inmates who will be appropriate candidates for parole. If these inmates are thoroughly prepared for their initial parole hearings, the number of hearing waivers and appearances before the Board should be reduced. This should permit the release of inmates at an earlier date which in turn will reduce prison crowding. According to the Department of Institutions, if inmates' length of stay from parole-eligibility to parole release is reduced by four, six, or eight months, the following bed savings would result for fiscal years 1990 through 1995:

POTENTIAL BED SAVINGS: FY 1990 - 1995

Reduction in months	1990	1991	1992	1993	1994	1995
4	6	12	16	20	23	25
6	9	18	24	30	35	38
8	13	24	32	40	47	52

Also as a result of this program, more structured and appropriate parole plans should be developed in cooperation with probation and parole field services and interstate compact administrators. This should reduce delays in plan approval after parole is granted.

- (2) Reduction in parole violators: Because a pre-parole program requires that an inmate complete the necessary treatment and training while incarcerated and develop a sound parole plan, the inmate's chances for succeeding on parole are enhanced. In

addition, pre-parole programming should enable the Board to better identify those inmates who are unwilling or unable to comply with parole supervision.

REQUIRED LEGISLATION/ADMINISTRATIVE RULES

The Board of Pardons may administer a pre-parole program within its current statutory authority; no substantive legislation is necessary to implement the program. However, legislative approval is needed for employing additional Board of Pardons employees and for funding the new positions.

IMPLEMENTATION ISSUES

Extensive cooperation and coordination between prison officials and the Board is essential for a successful pre-parole program. Inmates who are involved in pre-parole programming must be given priority in educational, treatment, and training programs at the prison. If rehabilitation programs are unavailable, inmates will be unable to meet their goals and objectives, which may jeopardize their chances for parole.

PROPOSAL #7
DISCRETIONARY EARLY DISCHARGES

STATEMENT OF PROBLEM

A short-term, emergency approach for curbing prison overcrowding is the use of early release. Early release mechanisms alleviate overcrowding by reducing inmates' length of incarceration when prison capacity is exceeded. As of 1983, at least 15 states provided for the early release of inmates.

In 1983, Montana enacted an early release law providing for early parole of certain inmates when the population of Montana State Prison (MSP) or the Women's Correctional Center (WCC) exceeded its design capacity. Under this statute, an inmate may be paroled 120 days in advance of his/her original parole date, if the inmate has been incarcerated at least 12 months at the time of the proposed release. The early parole mechanism is activated when the Department of Institutions certifies to the Board of Pardons that the MSP population exceeds its design capacity of 744 by 96 inmates or that the WCC population exceeds its design capacity of 35 inmates. The population at the institution must exceed design capacity for more than 30 days. Upon certification, the Board must consider inmates for release on parole 120 days before their eligibility date.

Montana's early parole mechanism has been activated every month since its effective date of March 24, 1983. During calendar years 1985 through 1987, 214 inmates were eligible for early parole, an average of 71 inmates each year. Nearly half of the parole-eligibles (47 percent or 101 inmates) disqualified themselves from early release by waiving their right to a hearing before the Board. Forty-two percent (89 inmates) received

hearings but were denied parole. The remaining 11 percent (24 inmates) were granted parole.

According to Board of Pardons staff, inmates often waive their right to an early parole hearing because they have not developed adequate parole plans or completed certain treatment or training programs that would enhance their chances of being paroled. Board staff also speculate that the early parole rate is low (21 percent of those receiving hearings) because generally inmates appearing before the Board for early release are more difficult to parole compared to those whose parole dates have not been accelerated. Because the statute prohibits inmates who have served less than 12 months from being considered for early release, eligible inmates are likely to be offenders who are serving longer terms for having committed more serious crimes. In other words, inmates serving lighter sentences who may be better parole candidates are ineligible for early release.

With an average of eight releases occurring per year, Montana's early parole provisions have been ineffective in relieving the pressures of prison overcrowding. An early release mechanism that may prove more effective is the reduction of inmates' length of stay by granting additional good time when prison capacity is exceeded.

DESCRIPTION OF PROPOSAL

Legislation should be enacted permitting, under emergency circumstances, the early discharge of certain MSP and WCC inmates. This early discharge mechanism would be activated under the same conditions as the early parole provisions: when the Department of Institutions certifies to the Board of Pardons that the

MSP population exceeds its design capacity of 744 by 96 inmates or that the WCC population exceeds its design capacity of 35 inmates and that MSP or WCC has exceeded its capacity for more than 30 days. Upon certification, the Department, in consultation with the Board, may grant up to 120 days of good time to inmates in the institution in which the design capacity has been exceeded if the inmates: (1) are within 120 days of completing their prison sentence and (2) have been incarcerated at a state correctional facility for at least one year.

IMPLEMENTATION COSTS

None.

PRISON POPULATION IMPACT

Assuming that the Department of Institutions would choose not to release maximum custody inmates and 90 percent of the sex offenders, the use of discretionary early discharges should result in the following bed savings:

Bed Savings: FY 1990 - 1995*

1990	1991	1992	1993	1994	1995
53	54	55	56	57	58

* Based on Department of Institutions projected population increases and a maximum MSP capacity of 1,028.

REQUIRED LEGISLATION/ADMINISTRATIVE RULES

See attached bill draft.

IMPLEMENTATION ISSUES

Some risk to public safety may be associated with the use of early discharges. This risk can be minimized by careful selection of inmates for release. In addition, appropriately one-half of the inmates eligible for early discharge, upon release, must complete the suspended portion of their sentences under probation supervision. Supervision should diminish the public safety risk.

1 BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE CRIMINAL JUSTICE AND
4 CORRECTIONS ADVISORY COUNCIL

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING THE
7 DEPARTMENT OF INSTITUTIONS TO GRANT ADDITIONAL GOOD TIME
8 ALLOWANCE TO CERTAIN INMATES WHEN THE POPULATION AT MONTANA
9 STATE PRISON OR THE WOMEN'S CORRECTION CENTER EXCEEDS DESIGN
10 CAPACITY; AMENDING SECTION 53-30-105, MCA; AND PROVIDING AN
11 IMMEDIATE EFFECTIVE DATE."

12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Section 53-30-105, MCA, is amended to read:

15 **"53-30-105. Good time allowance. (1)** The department of
16 institutions shall adopt rules providing for the granting of
17 good time allowance for inmates employed in any prison work
18 or activity. The good time allowance shall operate as a
19 credit on his sentence as imposed by the court, conditioned
20 upon the inmate's good behavior and compliance with the
21 rules made by the department or the warden. The rules
22 adopted by the department may not grant good time allowance
23 to exceed:

24 (a) 10 days per month for inmates assigned to maximum,
25 close, and medium I security classifications;

1 (b) 13 days per month for those classified as medium
2 II and minimum security classifications;

3 (c) 15 days per month for inmates after having been
4 assigned as medium II or minimum security for an
5 uninterrupted period of 1 year;

6 (d) 13 days per month for those inmates enrolled in
7 school who successfully complete the course of study or who
8 while so enrolled are released from prison by discharge or
9 parole;

10 (e) 3 days per month for those inmates participating
11 in self-improvement activities designated by the department.

12 (2) If the department certifies to the board of
13 pardons that the population at the state prison or the
14 women's correction center has exceeded design capacity as
15 provided in 46-23-201, the department, in consultation with
16 the board of pardons, may grant up to 120 days of good time
17 allowance to inmates in the institution in which the design
18 capacity has been exceeded if the inmates:

19 (a) are within 120 days of completing their prison
20 sentences; and

21 (b) have been incarcerated at a state correctional
22 facility for at least 1 year.

23 (2)(3) In the event of an attempted escape by an
24 inmate or a violation of the rules prescribed by the
25 department or warden, the inmate may be punished by the

1 forfeiture of part or all good time allowances. The warden
2 of the state prison shall advise the department of any
3 attempted escape or violation of rules on the part of the
4 inmate. Any punishment by forfeiture of good time allowance
5 must be approved by the department.

6 f3}(4) A person may not earn good time under this
7 section while he is on probation or parole.

8 f4}(5) The warden of the state prison may request that
9 all or portions of any previously forfeited good time be
10 restored as a result of subsequent good behavior. Any
11 restoration of good time allowance must be approved by the
12 department."

13 **Section 2. Extension of authority.** Any existing
14 authority to make rules on the subject of the provisions of
15 [this act] is extended to the provisions of [this act].

16 **Section 3. Effective date.** [This act] is effective on
17 passage and approval.

-End-

PROPOSAL #8
JAIL PLACEMENT FOR PAROLE AND PRE-RELEASE
CENTER VIOLATORS

STATEMENT OF PROBLEM

When a parolee allegedly violates a condition of parole, he/she is entitled to receive an on-site parole violation hearing. Similarly, a pre-release center resident is entitled to a disciplinary hearing on an alleged offense committed while housed at the center. Both types of due process hearings are conducted by a probation and parole regional supervisor.

If the regional supervisor finds a parolee guilty of a serious violation, the parolee may be returned to prison for a hearing before the Board of Pardons. If the Board revokes the offender's parole, he/she may be reparaoled at a later date or be required to serve the remainder of his/her sentence in prison. If the regional supervisor finds a pre-release center resident guilty of a serious offense, the supervisor may take a number of actions, including restricting the resident's privileges, requiring payment of restitution, recommending loss of accrued good time, or returning the resident to prison.

According to regional supervisors, 69 parole revocation hearings and 112 pre-release center disciplinary hearings were conducted in calendar year 1987. These hearings resulted in 54 parolees and 62 pre-release center residents, or a total of 116 offenders, being returned to Montana State Prison (MSP) or the Women's Correctional Center (WCC).

Returning parole and pre-release center violators to MSP or WCC aggravates crowded conditions at the institution. The availability of an intermediate sanction for such

offenders, such as jail placement for a period of time, may reduce prison admissions attributable to these violations.

DESCRIPTION OF PROPOSAL

Following a due process hearing and a finding of guilt, a regional supervisor should be permitted to place in a county jail an offender who has violated parole conditions or who has committed a serious infraction while residing at a pre-release center. Jail placement should be used in lieu of returning the offender to MSP or WCC and should not exceed 60 days.

IMPLEMENTATION COSTS

The Department of Institutions would be required to reimburse counties for housing parolees and pre-release center residents. Daily boarding rates vary among the counties. For example, for housing federal prisoners, Yellowstone and Cascade Counties charge \$38 per day, Missoula County charges \$31 per day, and Silver Bow County charges \$28.50 per day.

Department officials estimate that parolees or pre-release center residents would spend an average of 30 days in jail. If, for example, 58 offenders a year (50 percent of those returned to MSP or WCC by regional supervisors in calendar year 1987) were placed for 30 days in a county jail at a rate of \$38 per day, the following cost would be incurred:

$$58 \text{ violators} \times 30 \text{ days} \times \$38 = \$66,120$$

Biennial cost: \$132,240

PRISON POPULATION IMPACT

This proposal would reduce prison admissions by diverting prison-bound parole and pre-release center violators to jail.

REQUIRED LEGISLATION/ADMINISTRATIVE RULES

For placing parole violators: Legislation is needed to authorize a regional supervisor^{to place a parole violator in a county jail in lieu of returning him/her to MSP or WCC.} In addition, funds must be appropriated to the Department of Institutions for payment to counties for housing parolees.

For placing pre-release center violators: The Department, without additional statutory authority, could adopt a policy providing for placement of pre-release center violators in county jails for a maximum of 60 days. (Current department policy permits a supervisor to place an offender in the county jail for up to ten days.) Funds must be appropriated to the Department for payment to counties for housing residents.

IMPLEMENTATION ISSUES

The success of this proposal hinges on the availability of space in the county jails. If no space is available, placement of parole and pre-release center violators cannot be made.

PROPOSAL #9
INCREASE IN PROBATION AND PAROLE OFFICERS

STATEMENT OF PROBLEM

As of June 1988, there were 39 probation and parole officers in Montana supervising 3,065 offenders. Because of their heavy caseloads, officers cannot meet current supervision standards and complete other assignments, such as conducting presentence, placement, and supervised release investigations. Inadequate supervision poses a risk to public safety.

DESCRIPTION OF PROPOSAL

The probation and parole workforce should be increased by ten officers. According to a recent Department of Institutions caseload analysis, seven additional full-time officers would be needed to meet current supervision standards; three more officers would permit field services to exceed these standards. In addition, three half-time secretaries should be hired to assist officers in those locations where there is no clerical support available.

IMPLEMENTATION COSTS

	<u>FY 1990</u>	<u>FY 1991</u>
Ten probation and parole officers (salary and benefits)	\$222,720	\$239,281
Operating expenses for officers ¹	61,037	61,037
Equipment for officers	117,65 ²	0
Three half-time secretaries (salary and benefits) ³	26,649	26,649
 Fiscal year total	 \$428,058	 \$326,967

FISCAL YEAR 1990 - 1991 BIENNIUM TOTAL: \$755,025

¹ Includes contracted services, supplies and materials, communications, travel, rent, and repairs and maintenance

² Includes automobiles and office equipment (desks, chairs, filing cabinets, etc.)

³ Operating expenses and equipment for secretaries can be absorbed in current budget.

PRISON POPULATION IMPACT

An increase in personnel should permit officers to exceed current supervision standards and provide improved services to offenders. This may result in a reduction in the number of probation and parole revocations. Fewer revocations, in turn, would reduce prison admissions.

Currently, probation and parole revocations account for about 43 percent of prison admissions. If, for example, the additional officers resulted in a ten percent

reduction in revocations, the following bed savings should occur for fiscal years 1990 through 1995:

POTENTIAL BED SAVINGS: FY 1990 - 1995

1990	1991	1992	1993	1994	1995
18	25	26	26	25	25

REQUIRED LEGISLATION/ADMINISTRATIVE RULES

Legislative approval is required for additional Department of Institutions employees and for funding the new positions.

IMPLEMENTATION ISSUES

An unintended consequence of adding more officers is that probation and parole revocations may increase, rather than decrease, because of the officers' ability to better supervise their clients. Increased revocations will aggravate the prison overcrowding problem. However, increased revocations may enhance public safety by incapacitating offenders.

PROPOSAL #10
HIRING PRE-SENTENCE INVESTIGATORS TO PREPARE
PRE-SENTENCE INVESTIGATIONS

STATEMENT OF PROBLEM

A pre-sentence investigation (PSI) is a written report of investigation prepared by a probation and parole officer to be considered by the court in sentencing convicted offenders. A PSI must include an evaluation of the offender with information about: (1) the characteristics, circumstances, needs, and potentialities of the offender; (2) his/her criminal record and social history; (3) the circumstances of the offense; (4) the time the defendant has been in detention; and (5) the harm to the victim, his/her immediate family, and the community (46-18-112, MCA).

Several persons testified at the Council's public hearings that: (1) the quality and accuracy of PSIs were questionable and (2) time to completion was excessive. The quality, accuracy, and time of preparation of PSIs may be improved if they were prepared by trained specialists. In addition, probation and parole officers are currently unable to meet minimum standards of supervision because of excessive workloads. If probation and parole officers did not have to prepare PSIs in addition to their primary duties of supervision and counseling, they should be able to supervise at minimum standards.

DESCRIPTION OF PROPOSAL

The task of preparing PSIs should be removed from the duties of probation and parole officers. The Department of Institutions should hire eight pre-sentence investigators to prepare PSIs in the state. Pre-

sentence investigators would be required to have: (1) knowledge of modern principles and practices of casework techniques, (2) knowledge and experience relative to interviewing techniques, (3) knowledge of court procedures, including the procedure for sentencing persons convicted of violations, (4) demonstrated ability to write clear and concise reports, and (5) education and/or experience in the field of technical writing. The work should be performed and coordinated under the general supervision of the Department. A consistent format should be followed for all PSIs prepared in the state.

About 98 PSIs were completed by probation and parole officers in Montana each month during fiscal year 1988. Workload analysis performed by the Department determined that PSI preparation in the state required 6.3 full-time equivalents (FTEs) during fiscal year 1988. That figure does not include travel time. Allowing for travel time, hiring eight FTE pre-sentence investigators should be adequate for PSI preparation in the state.

IMPLEMENTATION COSTS

Start-up costs (incl. office equipment, automobiles)	\$ 80,592
Biennial operational costs (incl. eight Grade 13 officers ⁹)	\$432,205
Total cost for first biennium	\$512,797

⁹The actual classification of these positions would be determined by the Department of Administration based on job content.

The Department currently has a budget request for seven additional probation and parole officers and three half-time secretaries at a cost of \$558,389 for the biennium. Hiring pre-sentence investigators may negate the need for additional probation and parole officers.

PRISON POPULATION IMPACT

Hiring pre-sentence investigators may impact prison overcrowding in two ways: (1) probation and parole officers may have more time to supervise their clients, possibly reducing the number of revocations which in turn may reduce prison admissions and (2) pre-sentence investigators may be able to prepare in-depth offender specific sentencing plans¹⁰, which may reduce the number of admissions to prison by better use of alternatives.

Currently, probation and parole revocations account for about 43 percent of prison admissions. Allowing probation and parole officers to better supervise their clients could either reduce or increase revocation admissions to prison. If the increased supervision resulted in a ten percent reduction in revocations, the following bed savings should occur for fiscal years 1990 through 1995:

POTENTIAL BED SAVINGS: FY 1990 - 1995

1990	1991	1992	1993	1994	1995
18	25	26	26	25	25

¹⁰Offender specific sentencing plans provide more specific information than a PSI, particularly by focusing on developing sentencing recommendations that emphasize non-incarcerative penalties.

REQUIRED LEGISLATION/ADMINISTRATIVE RULES

A biennial appropriation for \$512,797 and authority for the Department to hire eight FTEs are required for this proposal. Sections 46-18-111 and 46-18-112, MCA would need to be amended. The Department would write administrative rules regarding program set-up and employee classifications.

IMPLEMENTATION ISSUES

A pre-sentence investigator may be required to travel extensively to cover rural areas. Requiring probation and parole officers to prepare PSIs in rural areas may be more efficient. In addition, probation and parole officers may not know as much about their clients prior to supervising them, since there may be a loss of key information between officers specializing in supervision and officers specializing in investigation. The PSI format in Montana has just undergone extensive analysis and revision in order to have a consistent and useful document prepared state-wide. That new format is being tested at this time.

PROPOSAL #11
PAROLE RELEASE: REMOVAL OF LIBERTY INTEREST

STATEMENT OF PROBLEM

A 1987 U.S. Supreme Court decision (Board of Pardons v. Allen, 107 S.Ct. 2415 (1987)) ruled that Montana's parole-eligibility statute (46-23-201, MCA) creates an expectation of release because it requires (by the use of the mandatory language "shall") that the Board of Pardons parole an inmate when the Board determines that the statutory criteria for release are present. According to the Supreme Court, this expectation of parole release is a liberty interest entitled to constitutional due process protections.

Because case law concerning due process is constantly changing, there is no guarantee that today's parole board procedures will meet due process requirements in future years. If future courts, in an effort to further ensure the fairness and integrity of the parole system, expand due process protections, the Board may be required to amend its procedures accordingly. Expanding due process requirements may place additional administrative and/or financial burdens on the Board.

DESCRIPTION OF PROPOSAL

The possible future effects of the Allen decision should be negated by replacing the mandatory language in 46-30-201, MCA ("shall") with discretionary language ("may"). This would remove the liberty interest found in Allen and thus the requirement for due process protections.

IMPLEMENTATION COSTS

None.

PRISON POPULATION IMPACT

None.

REQUIRED LEGISLATION/ADMINISTRATIVE RULES

See attached bill draft.

IMPLEMENTATION ISSUES

There is a legal question as to whether the proposed legislation can be applied to inmates whose crimes were committed before the effective date of the legislation. This issue may have to be resolved by the courts.

1 BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE CRIMINAL JUSTICE AND

4 CORRECTIONS ADVISORY COUNCIL

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING PAROLE RELEASE
7 BY THE BOARD OF PARDONS DISCRETIONARY, RATHER THAN
8 MANDATORY, IF CERTAIN STATUTORY CRITERIA ARE MET; AMENDING
9 SECTION 46-23-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
10 DATE."

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 46-23-201, MCA, is amended to read:

14 "46-23-201. Prisoners eligible for parole. (1) Subject
15 to the following restrictions contained in subsections (2)
16 through (6), the board ~~shall~~ may release on parole by
17 appropriate order any person confined in the Montana state
18 prison or the women's correction center, except persons
19 under sentence of death and persons serving sentences
20 imposed under 46-18-202(2), when in its opinion there is
21 reasonable probability that the prisoner can be released
22 without detriment to the prisoner or to the community...

23 ~~(at)(2)~~ No convict serving a time sentence may be
24 paroled until he has served at least one-half of his full
25 term, less the good time allowance provided for in

1 53-30-105; except that a convict designated as a
2 nondangerous offender under 46-18-404 may be paroled after
3 he has served one-quarter of his full term, less the good
4 time allowance provided for in 53-30-105. Any offender
5 serving a time sentence may be paroled after he has served,
6 upon his term of sentence, 17 1/2 years.

7 t_b}(3) No convict serving a life sentence may be
8 paroled until he has served 30 years, less the good time
9 allowance provided for in 53-30-105.

10 t₂}(4) A parole shall may be ordered only for the best
11 interests of society and not as an award of clemency or a
12 reduction of sentence or pardon. A prisoner shall may be
13 placed on parole only when the board believes that he is
14 able and willing to fulfill the obligations of a law-abiding
15 citizen.

16 t₃}(5) If the department of institutions certifies to
17 the board that the population at the Montana state prison
18 exceeds its design capacity of 744 by 96 inmates or that the
19 population at the women's correction center exceeds its
20 design capacity of 35 inmates and that the prison or the
21 center has exceeded its capacity for a period of more than
22 30 days, the board shall consider convicts in the
23 institution in which the design capacity has been exceeded
24 eligible for parole 120 days prior to the eligibility date
25 provided for in subsection-t₁ subsections (2) and (3).

1 ~~(4)(6)~~ Regardless of length of sentence, if the
2 conditions of parole eligibility are met within the initial
3 12 months of incarceration at Montana state prison, the
4 provisions of subsection ~~(3)~~ (5) do not apply."

5 **Section 2.** Extension of authority. Any existing
6 authority to make rules on the subject of the provisions of
7 [this act] is extended to the provisions of [this act].

8 **Section 3.** Effective date. [This act] is effective on
9 passage and approval.

-End-

PROPOSAL #12
HALF-TIME BOARD OF PARDONS CHAIRMAN

STATEMENT OF PROBLEM

In Montana, parole release decisions are made by the Board of Pardons. The Board is composed of three members and an auxiliary member¹¹ appointed by the Governor, with consent of the Senate, to four-year terms. The Governor designates the Board's chairman.

In calendar year 1987, the Board chairman worked an equivalent of 159 eight-hour days. Based on a 260-day work year (2,080 hours), the chairman's workload was equivalent to that of a 0.61 full-time employee. The current responsibilities placed on the Board chairman for meeting preparation, conducting parole hearings at Montana State Prison, Swan River Forest Camp, and the pre-release centers, and performing administrative functions such as budgeting and personnel management exceed the duties that reasonably can be placed on a citizen member.

In 31 states, parole board members serve as full-time professionals. Fourteen states (including Montana, Idaho, Wyoming, North Dakota, and South Dakota) have citizen boards. In five states, the chairman serves full-time while the remainder of the board is composed of citizen members.

¹¹ The auxiliary member attends meetings that another board member is unable to attend.

DESCRIPTION OF PROPOSAL

The chairman of the Board of Pardons should be made a half-time salaried state official. The chairman would remain a gubernatorial appointee who is exempt from the state classification system. The chairman's salary would be determined by the Governor.

IMPLEMENTATION COSTS

Because the chairman's salary would be set by the Governor, no definitive cost estimate may be made for this proposal.

If, however, the salary was proportionately competitive with salaries received by full-time chairman in other states, the chairman would earn approximately \$20,000 annually.¹² With current state benefits, the biennial cost for a half-time chairman would be \$48,896.

Note: During fiscal years 1987 and 1988, the chairman received a total of \$15,950 for his services.¹³ If this amount is deducted from the biennial cost above, the net cost for implementing this proposal is \$32,946.

PRISON POPULATION IMPACT

None.

¹² In 1985, full-time chairmen in other states earned an average of \$40,240 a year.

¹³ Board members receive \$50 for each day in which they are "actually and necessarily engaged in the performance of board duties." (2-15-125(7), MCA)

REQUIRED LEGISLATION/ADMINISTRATIVE RULES

See attached bill draft. In addition to this substantive legislation, the budget for the Board of Pardons must be increased to reflect the conversion to a half-time chairman.

IMPLEMENTATION ISSUES

Most state employees are not reimbursed for travel expenses if they choose to reside in a city or town other than the one where they work. If this requirement is not applied to a half-time Board chairman and the chairman resides a substantial distance from Deer Lodge, adequate funds must be included in the Board's budget to cover travel expenses.

1 BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE CRIMINAL JUSTICE AND

4 CORRECTIONS ADVISORY COUNCIL

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING THE CHAIRMAN OF
7 THE BOARD OF PARDONS A HALF-TIME SALARIED OFFICER; AMENDING
8 SECTION 2-15-2302, MCA; AND PROVIDING AN EFFECTIVE DATE."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 2-15-2302, MCA, is amended to read:

12 "2-15-2302. Board of pardons -- composition --
13 allocation -- quasi-judicial. (1) There is a board of
14 pardons.

15 (2) The board consists of three members and an
16 auxiliary member, at least one of whom shall have particular
17 knowledge of Indian culture and problems. Members of the
18 board, including the auxiliary member, shall possess
19 academic training which has qualified them for professional
20 practice in a field such as criminology, education,
21 psychiatry, psychology, law, social work, sociology, or
22 guidance and counseling. Related work experience in the
23 areas listed may be substituted for these educational
24 requirements.

25 (3) The governor shall designate one member, other

1 than the auxiliary member, as a chairman. The chairman shall
2 serve as a half-time salaried officer and must be
3 compensated at a rate determined by the governor.

4 (3)(4) The auxiliary member shall attend any meeting
5 that a regular board member is unable to attend, and at that
6 time the auxiliary member has all the rights and
7 responsibilities of a regular board member.

8 (4)(5) The board is allocated to the department for
9 administrative purposes only as prescribed in 2-15-121.
10 However, the board may hire its own personnel, and
11 2-15-121(2)(d) does not apply.

12 (5)(6) The board, including the auxiliary member, is
13 designated as a quasi-judicial board for purposes of
14 2-15-124, except board members shall be compensated as
15 provided by legislative appropriation."

16 Section 2. Effective date. [This act] is effective
17 July 1, 1989.

-End-

PROPOSAL #13
STAGGERED TERMS FOR BOARD OF PARDONS MEMBERS

STATEMENT OF PROBLEM

In Montana, the Governor appoints three of the members of the Board of Pardons at the beginning of his/her term of office. The fourth member is appointed in January of the third year of the Governor's term. All members serve four-year terms and may be reappointed.

Every four years, a potential exists for a majority of the Board (three members) to be replaced. If this occurs, continuity in parole decision-making may be jeopardized. Continuity is essential given the critical nature of the release decisions made by the Board.

DESCRIPTION OF PROPOSAL

Under this proposal, Board of Pardons members (except the auxiliary member) would serve staggered four-year terms. The Governor would appoint one member and the auxiliary member in January of the first year of his/her term. A third member would be appointed in January of the second year of the Governor's term. The remaining member would be appointed in January of the third year.

To implement the staggered term system, the first terms of the successors to the three members whose terms expire January 2, 1989 would be as follows: (1) one member and the auxiliary member would be appointed to four-year terms and (2) one member would be appointed to a three-year term. (Successors to the member serving the three-year term would be appointed for four years.)

IMPLEMENTATION COSTS

None.

PRISON POPULATION IMPACT

None.

REQUIRED LEGISLATION/ADMINISTRATIVE RULES

See attached bill draft.

IMPLEMENTATION ISSUES

This proposal may diminish gubernatorial influence over Board procedures and decisions because the Governor cannot appoint a majority of members until his/her second year in office.

1 BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE CRIMINAL JUSTICE AND

4 CORRECTIONS ADVISORY COUNCIL

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR STAGGERED
7 TERMS FOR CERTAIN MEMBERS OF THE BOARD OF PARDONS; AMENDING
8 SECTION 2-15-2302, MCA; AND PROVIDING A RETROACTIVE
9 APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 2-15-2302, MCA, is amended to read:

13 **"2-15-2302. Board of pardons -- composition --**
14 **allocation -- quasi-judicial.** (1) There is a board of
15 pardons.

16 (2) The board consists of three members and an
17 auxiliary member, at least one of whom shall have particular
18 knowledge of Indian culture and problems. Members of the
19 board, including the auxiliary member, shall possess
20 academic training which has qualified them for professional
21 practice in a field such as criminology, education,
22 psychiatry, psychology, law, social work, sociology, or
23 guidance and counseling. Related work experience in the
24 areas listed may be substituted for these educational
25 requirements.

1 (3) The auxiliary member shall attend any meeting that
2 a regular board member is unable to attend, and at that time
3 the auxiliary member has all the rights and responsibilities
4 of a regular board member.

5 (4) One member and the auxiliary member shall serve
6 terms concurrent with the governor. The remaining members
7 shall serve staggered 4-year terms.

8 (4)(5) The board is allocated to the department for
9 administrative purposes only as prescribed in 2-15-121.
10 However, the board may hire its own personnel, and
11 2-15-121(2)(d) does not apply.

12 (5)(6) The board, including the auxiliary member, is
13 designated as a quasi-judicial board for purposes of
14 2-15-124, except board members shall be compensated as
15 provided by legislative appropriation and the terms of board
16 members shall be staggered as provided in subsection (4)."

17 **Section 2. Implementation of staggered terms.** (1) To
18 implement the staggered-term system provided for in
19 2-15-2302(4), the first terms of the successors to the three
20 members whose terms expire January 2, 1989, are as follows:

21 (a) one member and the auxiliary member shall serve
22 4-year terms; and

23 (b) one member shall serve a 3-year term.

24 (2) Upon expiration of the terms provided in subsection
25 (1), each member shall serve a 4-year term.

1 **Section 3. Applicability.** [Section 2] applies
2 retroactively, within the meaning of 1-2-109, to the members
3 of the board of pardons appointed after January 2, 1988.

4 **Section 4. Effective date.** [This act] is effective on
5 passage and approval.

-End-

PROPOSAL #14
CONSTRUCTION OF PRISON HOUSING UNIT

STATEMENT OF PROBLEM

According to population forecasts by the Department of Institutions, the inmate population at Montana State Prison (MSP) will exceed the prison's maximum capacity of 1,028 inmates by the end of fiscal year 1990. Proposals recommended by the Criminal Justice and Corrections Advisory Council may not sufficiently reduce prison admissions or inmates' length of stay to guarantee that space will be available to accommodate the projected population increases. Therefore, prison construction may be needed to relieve crowding.

DESCRIPTION OF PROPOSAL

A 96-bed minimum security unit should be built on the MSP campus. If approved by the Legislature, construction will begin in July 1989; the unit will be ready to occupy by January 1, 1991. During the 1990-1991 biennium, the unit will be operational for six months (January 1 through June 30, 1991) and will require 5.8 FTEs (full-time equivalents) to staff.

IMPLEMENTATION COSTS

The Legislature must decide if the unit will be built primarily by inmate labor or by civilian labor. If built by inmates, construction costs will amount to approximately \$1 million. If built by civilians, costs will total about \$2.5 million. Personal expenses for staffing the unit during the fiscal year 1990-1991 biennium will be \$124,111 for 5.8 FTEs.

TOTAL COSTS FOR FY 1990 - 1991 BIENNIUM

	<u>With Inmate Labor</u>	<u>Without Inmate Labor</u>
Construction:	\$1,000,000	\$2,500,000
Personal services:	124,111	124,111
TOTAL:	\$1,124,111	\$2,624,111

PRISON POPULATION IMPACT

The proposed unit will house 96 inmates and increase MSP's maximum capacity to 1,124. According to Department of Institutions projections, this capacity will be sufficient until 1993.

REQUIRED LEGISLATION/ADMINISTRATIVE RULES

Legislative authorization is needed for constructing and staffing the new unit. Typically, state buildings are financed through the state's Long Range Building Program.

IMPLEMENTATION ISSUES

Based on Department of Institutions projections, a 96-bed housing unit will accommodate the inmate population for two years. The prison population will exceed the prison's maximum capacity by 15 inmates in 1993, by 33 inmates in 1994, and by 50 inmates in 1995.

Montana State Library



3 0864 1007 0489 2

ST book